

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5349 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KK SHAH-CONVENER FAMILY PLANNING CENTRE

Versus

BHAGWATI T KARIA (SINCE DECEASED) THRO' HIS HEIRS

Appearance:

MR SM MAZGAONKAR for Petitioner
MR DM THAKKER for Respondents No.1/1 to 1/3
MS PS PARMAR for Respondent No. 3
None present for Respondent No. 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/06/97

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. The petitioner challenges by this Special Civil Application the order of the controlling authority passed under the Payment of Gratuity Act, 1972, dated 30th

April, 1983, and the order of the appellate authority dated 23rd August, 1984, confirming the said order.

3. The controlling authority under its order dated 30th April, 1983, held that the payment of Gratuity Act, 1972, is applicable to the petitioner-institution and it has been ordered to make the payment of gratuity of Rs.6252/- to the respondent No.1. The petitioner challenged that order by filing an appeal before the appellate authority, which came to be dismissed under the order dated 23rd August, 1984.

4. Before the appellate authority, the only contention of the counsel for the petitioner was that the institution is run on grant-in-aid sanctioned by the Government and it is only possible for them to pay the amount of gratuity if the Government sanctions the amount of gratuity and at present, no fund is available with the institution and it is also not possible for them to pay the amount of gratuity. So, the petitioner has not disputed its liability to make the payment of gratuity to the respondent No.1 as well as the applicability of the provisions of the Payment of Gratuity Act, 1972 to the institution, before the appellate authority.

5. The order of the controlling authority whereunder it has held that the Act is applicable to the institution, and the institution is liable to make the payment of the amount of gratuity to the respondent No.1 has not been questioned before appellate authority. What the petitioner contended that the amount has to be given for the payment of the gratuity to the respondent No.1 by the Government. The respondent No.1 is admittedly employee of the petitioner, and as such, it has a principal liability to make the payment of the amount of gratuity to him. The respondent No.1 served the petitioner-institution and on his retirement he should have been paid the amount of gratuity by the petitioner and deferment of the payment of gratuity to him on whatever pretext is wholly unjustified and arbitrary. Even if it is taken that the petitioner should have been given the amount of the gratuity by the Government then it is the matter in between the Government and the petitioner and the respondent No.1 is not at all responsible. The petitioner should have paid the amount of gratuity to the respondent No.1 and in case it considers that the amount has to be reimbursed to it by the Government then it should have lodged the claim before the Government. But this Court will not permit the petitioner to divest of its liability of making the payment of gratuity to the respondent No.1 on the

aforesaid pretext. Both the authorities concurrently held in favour of the respondent No.1 and the amount of gratuity has to be paid by the petitioner to the respondent No.1, but for all these years the amount has not been paid to him. It is unfortunate that the respondent No.1 has also expired. So, a poor employee despite of serving the petitioner, even could not get the amount of gratuity which was to be given to him in lieu of the services rendered by him during his lifetime. This writ petition is wholly misconceived and the same deserves to be dismissed. Order accordingly.

6. This Special Civil Application is dismissed. Rule discharged. The petitioner is directed to pay Rs.1000/by way of costs of this petition to the legal heirs of respondent No.1.

zgs/-